PUBLIC BANK BHD.

v.

PENGARAH TANAH & GALIAN & ANOR.

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ (MALAYA)
GUNN CHIT TUAN SCJ
MOHD. JEMURI SERJAN SCJ
[SC CIVIL APPEAL NO. 01-35 OF 1989]
29 JUNE 1990

LAND LAW: *Registrar's caveat - Request for cancellation by party who is not registered proprietor - Sections 320, 321 National Land Code.*

LAND LAW: *Limitation - Time for appeal against decision of the Registrar - Three months - Date of communication of Registrar's decision to enter the caveat and not from date of refusal - Section 418 National Land Code - Out of time - Removal of caveat by Courts - Section 327 National Land Code.*

The appellant was the chargee of the said land. Due to the default by the chargor, the appellant obtained an order for sale of the said land for satisfaction of monies owed. Prior to the auction the 1st respondent advised the appellant that it had entered a Registrar's caveat on the said land on the ground that the registered owners owed income tax to the Inland Revenue Department.

The appellant's request for cancellation of the caveat was refused by the 1st respondent. The appellant then appealed against this refusal by way of originating motion; the 2nd respondent intervened in those proceedings. The notice of motion was dismissed, the appellant now appeals to the Supreme Court.

Held:

[1] Section 321(1)(a) of the National Land Code (the Code) does not apply in this case because it provides that a Registrar's caveat can continue in force until it is cancelled by the Registrar of his own motion which he did not do in this case.

[2] For the purpose of computation of time under s. 418 of the Code, time runs from the date of communication of the decision of the 1st respondent to enter the caveat because a decision under s. 418 of the Code can, in the circumstances of this case, only include any refusal of an application for the cancellation of the Registrar's caveat under s. 321(3)(b) by the proprietor of the land so affected.

[3] The decision in this case which could be appealed against by the appellant, who is not the proprietor of the said land, was the act of the Registrar in entering the Registrar's caveat.

[Appeal dismissed with costs.]

Cases referred to:

Registrar of Titles, Johore v. Temenggong Securities Ltd. & Anor. [1976] 2 MLJ 44
Land Executive Committee of Federal Territory v. Syarikat Harper Gilfillan Bhd. [1981] 1 MLJ 234

Legislation referred to:

National Land Code 1965, ss. 320, (1), 321(3)(a), (3)(c), 327, 418

For the appellant - Tan Kiah Teck; M/s. Tan & Tan
For the 1st respondent - Abd. Rahim Uda, Federal Counsel
For the 2nd respondent - Mohd. Bazain Idris, Senior Federal Counsel

JUDGMENT

Gunn Chit Tuan SCJ:

The registered owners of Grant 10767 Lot 317 Bandar Kota Tinggi (hereinafter referred to as 'the said land') had charged it to Public Bank Berhad (the appellant). Owing to default by the registered owners as chargors of the said land, the appellant on 7 September 1988, obtained an order of sale of the said land towards satisfaction of the sum of RM677,898.44 due as at 17 August 1988. The auction sale of the said land was fixed for 14 January 1989.

On 20 October 1988, the appellant received a copy of Form 19A of the National Land Code 1965, from the Pengarah Tanah & Galian, Johore (the 1st respondent) informing it that he had entered a Registrar's caveat upon the register document of title to the said land on the ground that the registered owners owed income tax to the Inland Revenue Department.

The appellant's solicitors, Messrs. Tan & Tan, wrote to the 1st respondent on 21 December 1988 requesting him to cancel the Registrar's caveat which was an obstacle to the appellant's auction sale as the successful purchaser could not be registered as owner of the said land. The 1st respondent in a reply dated 27 December 1988, rejected the appellant's request and advised it to write to the Inland Revenue Department. On 4 January 1989, the appellant's solicitors wrote a letter to the Inland Revenue Department requesting them to make arrangements to withdraw the Registrar's caveat. On 14 January 1989, the appellant's solicitors received a reply dated 11 January 1989 from the Inland Revenue Department informing them that they refused to withdraw the Registrar's caveat and stipulated a condition that the appellant undertakes to pay the excess, if any, to the Inland Revenue Department before it would consider the matter.

On 29 January 1989, the appellant filed a notice of originating motion appealing against the 1st respondent's refusal to cancel the Registrar's caveat on the said land. The Director-General of Inland Revenue (the 2nd respondent) applied by summons in chambers dated 12 June 1989, and was by an order of Court dated 21 June 1989 allowed to intervene and be cited as the 2nd respondent to the action. In an affidavit dated 11 June 1989, affirmed by the assistant director of the Department of Inland Revenue, Johore, it was averred that following investigation by the Department of Inland Revenue, it has been disclosed that the registered owners of the said land have been involved in a scheme of tax evasion and under-declaration of income. During the year 1988, notices of additional assessments of income tax for the years of assessments 1974 to 1982 were issued to the registered owners. The total amount of tax due and owing to the Director-General of Inland Revenue from the registered owners was RM886,352.93. On 29 September 1988, in order to protect the interest of the Federation, the Department of Inland Revenue made a request to the first respondent for an entry of a Registrar's caveat on the said land.

Pursuant to the provisions of s. 320 of the National Land Code 1965, the Department of Inland Revenue was informed by the first respondent that a Registrar's caveat was duly entered on the said land on 29 December 1988.

On 22 June 1989, the learned Judicial Commissioner in the High Court at Johore Bahru ordered that the appellant's originating motion be dismissed without costs. In his grounds of decision of the learned Judicial Commissioner referred to s. 321(3) of the National Land Code 1965, which reads as follows:

(3) A Registrar's caveat shall continue in force until it is cancelled by the Registrar:

(a) of his own motion; or

(b) on an application in that behalf by the proprietor of the land affected; or

(c) pursuant to any order of the Court made on an appeal under s. 418 against his decision to enter the caveat, or his refusal of any application for its cancellation under para. (b).

and pointed out that para. (b) and the second limb of para. (c) of s. 321(3) do not apply in this case as there was no application for the cancellation of the said caveat by the proprietors of the land in question. He pointed out that the appellant was not the proprietor of the land in question, and consequently had no right to apply for the cancellation of the caveat under para. (b) or the second limb of para. (c).

The learned Judicial Commissioner was also of the view that by the virtue of s. 418 of the National Land Code, the time limited for appeal to the Court against the order of the Registrar is three months from the date of communication of the decision of the Registrar to enter the caveat, and not his decision to refuse the appellant's application for cancellation of the said caveat since para. (b) and the second limb of para. (c) of s. 321(3) are not relevant in the present case. The learned Judicial Commissioner therefore held that for the purpose of computation of time under s. 418 of the National Land Code 1965, it was crystal clear that time runs from the date of communication of the decision of the Registrar to enter the caveat i.e., from 20 October 1988. He pointed out that the appellant's appeal was entered on 29 January 1989, and held that the appeal was filed out of time.

Mr. Tan Kiah Teck, Counsel for the appellant, first contended before us that the learned Judicial Commissioner had erred in law by failing to direct his mind to s. 321(3)(a) of the National Land Code 1965. He then referred to the judgment of Lord Diplock in *Registrar of Titles, Johore v. Temenggong Securities Ltd. & Anor.* [1976] 2 MLJ 44, 47 in which his Lordship of the Privy Council after referring to s. 320 of the National Land Code 1965, which specifies the circumstances in which Registrar's caveats may be entered, referred to s. 321(3) which deals with the circumstances in which such caveat may be cancelled and said as follows:

> Under these sections the Registrar's function in relation to Registrar's caveats are not exclusively ministerial as they are in relation to the other kinds of caveats. They require the exercise of a discretion that is quasi-judicial in its nature. The prohibitory consequences resulting from the entry of a Registrar's caveat impose what may be very damaging restrictions upon the private rights of the proprietor of the land. The Registrar is not entitled to impose them unless they appear to him to be necessary or desirable for one or more of those purposes which upon the true construction of the section are specified in para. (a) or (b) of s. 320(1) or necessary or desirable to counteract such documentary error as is mentioned in para. (c).
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> In determining whether or not to exercise the power conferred upon him by the section, the Registrar can only act upon such information as is available to him. This will consist of what is entered in the register itself or filed in the registry, together with such additional information as may have been supplied to him by whoever has requested him to exercise his power to enter a Registrar's caveat.

If we had understood Mr. Tan correctly, it was his contention that the Registrar could only enter a caveat for one or more of those purposes specified in para. (a) or (b) of s. 320(1) or necessary or desirable to counteract such documentary error as is mentioned in para. (c) therein. Here we must point out that learned Counsel might have overlooked the fact that

s. 320(1) of the National Land Code 1965, was amended after the Privy Council's decision in *Registrar of Titles, Johore v. Temenggong Securities Ltd. & Anor.* (*supra*) by the addition of the following para. (ba):

> (ba) for securing that the land will be available to satisfy the whole or part of any debt due to the Federation or the State Authority whether such debt is secured and whether or not judgment thereon had been obtained; or

After the amendment of s. 320(1) of the National Land Code 1965, there is therefore an additional circumstance for which a Registrar's caveat may be entered. In this case the Registrar's caveat appeared to be necessary or desirable for the purpose specified in para. (ba) of s. 320(1) of the National Land Code 1965.

Mr. Tan then referred to the following s. 418 of the National Land Code:

> 418. Appeals to the Court:
>
> (1) Any person or body aggrieved by any decision under this Act of the State Commissioner, the Registrar or any Collector may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.
>
> (2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereon as it considers just.
>
> (3) In this section "decision" includes any act, omission, refusal, direction or order.

He pointed out that in that section the word 'decision' includes any refusal and contended that the appellant could therefore appeal against the refusal of the 1st respondent on 27 December 1988, to cancel the Registrar's caveat. Counsel also referred to s. 327 of the National Land Code concerning the removal of private caveats by the Court and pointed out that under that section any person or body aggrieved by the existence of a private caveat may apply to the Court at any time for an order for its removal.

Encik Mohamed Bazain Idris, Senior Federal Counsel for the 2nd respondent not only referred to s. 418 of the National Land Code but also referred to s. 321(2) of the National Land Code which reads as follows:

> (2) As soon as may be after the entry of any such caveat, the Registrar shall serve upon the proprietor of the land thereby affected a notification in Form 19A.

Senior Federal Counsel then pointed out that according to para. 6 of the affidavit of the manager of the appellant affirmed on 28 January 1989, the appellant had also received a copy of Form 19A from the 1st respondent on 20 October 1988. He then referred to *Land Executive Committee of Federal Territory v. Syarikat Harper Gilfillan Bhd.* [1981] 1 MLJ 234 and pointed out that the appellant had failed to exercise its right of appeal pursuant to s. 418 of the National Land Code.

Encik Abdul Rahim Uda, Federal Counsel for the 1st respondent, also referred to s. 321 of the National Land Code and stated that its provisions are clear. He contended that the appellant's only remedy was under s. 321(3)(c) of the National Land Code, and also contended that time was of the essence and must be adhered to.

In our view the learned Judicial Commissioner did not err in law, as contended by Mr. Tan, by failing to direct his mind to the provisions of s. 321(3)(a) of the National Land Code which does not apply this case because it provides that a Registrar's caveat can continue in

force until it is cancelled by the Registrar of his own motion which he did not do so in this case. We were also satisfied that the learned Judicial Commissioner was correct in law when he held that for the purpose of computation of time under s. 418 of the National Land Code 1965, time runs from the date of communication of the decision of the 1st respondent to enter the caveat i.e., from 20 October 1988, because, in our view, a decision under s. 418 of the Act can, in the circumstances of this case, only include any refusal of an application for the cancellation of the Registrar's caveat under para. (b) of s. 321(3) by the proprietor of the land affected. The decision in this case which could be appealed against by the appellant, who is not the proprietor of the said land, under s. 418 of the National Land Code 1965, was the act of the Registrar in entering the Registrar's caveat. In the circumstances of this case the learned Judicial Commissioner was therefore correct in ordering that the appellant's originating motion be dismissed. We too dismissed the appellant's appeal with costs and ordered that the deposit be paid to the respondents on account of their taxed costs.

Also found at [1990] 2 CLJ 346